

# Student Sexual Assault and Sexual Harassment Policy

## Emergency Assistance

(1) If someone is in immediate danger or requires urgent medical attention, use the Emergency Assistance contacts:

Emergency Assistance  
On campus - (02) 9850 9999  
For immediate help on campus  
Off campus - 000  
For immediate help off campus

(2) For other support service contact information, see the Support Services Contact Information in the [Student Sexual Assault and Sexual Harassment Procedure](#).

## Section 1 - Purpose

### Background

(3) All members of the Macquarie University Community have the right to be treated with dignity and respect, and to work or study in a safe environment.

(4) Sexual Assault and Sexual Harassment can cause significant harm to individuals and communities. Sexual Assault and Sexual Harassment are unacceptable, illegal and are prohibited by Macquarie University.

(5) This Policy should be read with the [Student Sexual Assault and Sexual Harassment Procedure](#).

(6) This Policy sets out:

- a. behaviours which are not accepted by Macquarie University;
- b. what Consent means in relation to those behaviours;
- c. how reports of Sexual Assault and Sexual Harassment concerning Macquarie University students can be made to the University; and
- d. how the University will respond to a report about Sexual Assault or Sexual Harassment committed by a student.

### Scope

(7) This Policy applies to members of the Macquarie University Community when engaged in University Activities or on University Premises. University Activities include a broad range of activities occurring on and off campus, including University-sponsored social events, and activities which use online platforms and / or social media. See Section 5 – Definitions for a detailed explanation of the terms ‘Macquarie University Community’, ‘University Activities’ and ‘University Premises’.

(8) Where Sexual Assault and / or Sexual Harassment is reported and is outside the scope of this Policy, the incident(s) will not be investigated by the University as a potential student misconduct issue. Support services and referrals,

however, will be offered.

(9) This Policy does not apply to sexual interaction, flirtation, attraction, or friendship which is invited, mutual, consensual, or reciprocated. However, behaviours can become Sexual Assault or Sexual Harassment if the interaction changes to non-consensual, unwelcomed or unreciprocated.

(10) This Policy does not apply to Sexual Assault or Sexual Harassment affecting anyone under the age of 18. Reports of child abuse, which includes any sexual offence or sexual misconduct involving children or young people must be managed in accordance with the [Children at Macquarie University Policy](#) / [Children at Macquarie University Procedure](#).

## Section 2 - Policy

### University Responsibilities

(11) The University is committed to providing a safe environment for all students and staff and does not tolerate any act of Sexual Assault or Sexual Harassment. Members of the Macquarie University Community should behave in an inclusive and respectful way.

(12) The University will:

- a. implement education and training for students, which may include mandatory education and training;
- b. provide evidence-based and Person-Centred support services to students who have experienced Sexual Assault or Sexual Harassment;
- c. provide students with ways to report behaviour to the University, including anonymous reports;
- d. assess all reports of Sexual Assault and Sexual Harassment;
- e. where possible, consult with the person who experienced Sexual Assault or Sexual Harassment, and take their wishes into account when responding to a report;
- f. ensure procedural fairness;
- g. ensure confidentiality and privacy, in accordance with University policy;
- h. impose a sanction, if a University investigation of a report concludes a student or student organisation has engaged in misconduct; and
- i. consider disciplinary action, if a report is assessed to be Vexatious or Malicious.

### Student Responsibilities

(13) Students at the University must not Sexually Assault or Sexually Harass any other member of the Macquarie University Community.

(14) The University may require students to undertake education and training in relation to Sexual Assault and Sexual Harassment. The University may implement sanctions for students who do not complete mandatory education and do not request to opt-out of mandatory education.

### What is Consent?

(15) Consent means a person has freely chosen to take part in sexual contact. Consent requires ongoing agreement; it can be withdrawn at any time. Where Consent is withdrawn or cannot be given, sexual contact must stop.

(16) If someone has given Consent in the past, it cannot be assumed that they consent to further sexual contact. Consent cannot be assumed because someone does not resist, verbally or physically, or because they do not appear to be resisting. Consent can be given by words or actions, if those words or actions are clear indications of willingness to engage in sexual contact.

(17) See Section 5 – Definitions for more information about Consent.

## **What is Sexual Assault?**

(18) For the purposes of this Policy, a person may be considered to have Sexually Assaulted another person if:

- a. the other person did not consent to sexual contact or a sexual act; and
- b. the person should have reasonably known, having thought about the circumstances, that the other person did not consent to sexual contact or a sexual act.

(19) See Section 5 – Definitions for information about specific behaviours which are Sexual Assault.

## **What is Sexual Harassment?**

(20) For the purposes of this Policy, Sexual Harassment is defined as:

- a. unwanted sexual advances, or unwelcome requests for sexual favours;
- b. or other unwelcome behaviour of a sexual nature; and
- c. a reasonable person, considering the situation, would expect the person experiencing the behaviour to be offended, humiliated, or intimidated by the behaviour.

(21) Sexual Harassment can take many forms and may be physical, verbal, or occur online. It includes behaviour that may be considered an offence under criminal law, such as stalking.

(22) See Section 5 - Definitions for more information about behaviours which are Sexual Harassment.

## **Support**

(23) The safety and wellbeing of students who have been affected by Sexual Assault and Sexual Harassment are priorities of the University. The University will provide accessible support for students affected by Sexual Assault and / or Sexual Harassment, whether or not the incidents occurred during University activities. Students can request support from University services, and / r from support services outside the University.

(24) Students at Macquarie who have experienced Sexual Assault or Sexual Harassment, can decide whether to share information with the University, or not. There are no time limits on seeking help or advice.

(25) Support provided by the University may include helping a student to access adjustment to their studies to support their safety, wellbeing or academic progress. Seeking support does not lead to an investigation by the University.

(26) For contact details of support services on and off campus, and examples of the kind of support a student may be able to access, see the [Student Sexual Assault and Sexual Harassment Procedure](#).

## **Reporting**

(27) The University encourages anyone in the Macquarie University Community who is affected by Sexual Assault or Sexual Harassment to make a report to the University. Members of the University Community who have experienced Sexual Assault or Sexual Harassment have the right to decide what information they report.

(28) Sexual Assault and Sexual Harassment affecting students can be reported to the University anonymously, or a person making a report can chose to provide their contact details. A report can be made by the person who experienced the behaviour, or by someone who witnessed or heard about the behaviour.

(29) For more information about how reports involving students can be made to the University and what happens

when a report is received, see the [Student Sexual Assault and Sexual Harassment Procedure](#).

(30) Staff reporting the behaviour of other staff members, or behaviour of members of the public which has affected staff only, will be referred to Human Resources at Macquarie University. These reports will be managed, using complaint handling policies and procedures appropriate to the situation.

(31) Any investigation of a report by the University is not a substitute for a criminal investigation conducted by the [NSW Police](#).

(32) The University's investigation procedures may not be applicable if a report of Sexual Assault or Sexual Harassment is made against someone who is not a member the Macquarie University Community.

### **Anonymous Reports**

(33) When an anonymous report is made, the University may not be able to take any further action. The information provided in an anonymous report will be used to monitor the incidence of Sexual Assault and Sexual Harassment affecting the Macquarie University Community, and to identify potential improvements to safety on campus.

(34) The assessment of an anonymous report may lead to information being shared with [NSW Police](#) or other relevant government agencies.

(35) For more information about when information from anonymous reports may be shared with other organisations, refer to 'Privacy and Confidentiality' in this Policy.

### **Report with Contact Details**

(36) Reports with contact details include the name and contact information of the person who experienced the Sexual Assault or Sexual Harassment or the name and contact information of the person who submitted the report.

(37) The University will consult with a person making a report with contact details regarding what response they wish the University to take. Reports with contact details may be treated as a complaint, which may lead to a University investigation.

(38) A report with contact details which concerns the actions of a student or a student organisation may result in the University putting in place interim measures affecting students; refer to 'Interim Measures' in this Policy for more information about interim measures.

(39) A report with contact details which concerns student behaviour or a student organisation, may result in the University responding in accordance with the [Student Discipline Rules](#) and [Student Discipline Procedure](#).

### **Reports on Behalf of Another Person**

(40) The University will accept reports made by a person who has witnessed or heard about a student experiencing Sexual Assault or Sexual Harassment.

(41) The University may not be able to investigate a report made on behalf of another person, if the person directly affected by Sexual Assault or Sexual Harassment does not share their contact details with the University.

### **Reports to External Organisations**

(42) Members of the Macquarie University Community can report to external organisations. Any student who experiences Sexual Assault or Sexual Harassment has the right to report to an external organisation, and the right to decide not to report.

(43) If a report is made to an external organisation, such as [NSW Police](#), a University response may need to be

delayed. However, the University may still implement interim measures.

## **Interim Measures**

(44) Interim measures against a student can be put in place by the University to reduce the potential for harm to any member of the Macquarie University Community. Interim measures do not anticipate the outcome of any University or external investigation and are not a penalty.

(45) Interim measures are temporary restrictions or requirements regarding who a student can contact, or how they can contact someone, or where and when they can go on campus. These restrictions or requirements may be in place for a length of time which the University considers appropriate. The University may also place conditions on the restrictions or requirements, if appropriate. Interim measures may be applied to any student and cannot be implemented unless a report has been made to the University.

(46) If the University or an external organisation is investigating a report, the University may put in place interim measures against a student before the investigation has been completed.

(47) A student who is subject to interim measures has the right to ask for the measures to be removed or varied.

(48) See 'Interim Measures' in the [Student Sexual Assault and Sexual Harassment Procedure](#), for more information about interim measures.

## **Privacy and Confidentiality**

### **University Responsibilities**

(49) Information from a report can be disclosed for a specific purpose, if the person making the report has given consent to disclosure. Otherwise, the University will keep reports about Sexual Assault and / or Sexual Harassment confidential, with some limitations.

(50) The University is required to report serious crimes, as defined in Section 316 of the [Crimes Act 1900](#). If a report provides information about a serious crime, the University must share this information with the [NSW Police](#). The University is also required, by law, to protect student and staff safety and may need to provide information to the [NSW Police](#) and / or relevant government agencies to safeguard the Macquarie University Community.

(51) Mandatory reporting legislation may also affect confidentiality. Information about Sexual Assault or Sexual Harassment that involves individuals under 18 years old (whether as victim, perpetrator or witness) must be reported to relevant government agencies, which may include the [NSW Police](#).

(52) Within the University, information from a report may only be accessed by staff who need this information to act on the responsibilities specified in this Policy. Where the University responds to a report, students and staff involved in the response or any investigation must keep all information about the report, the investigation, and the University response confidential. A University response includes an investigation, a finding or penalty.

### **Student Responsibilities**

(53) Students involved in any report, investigation or response may only disclose information if seeking support or advice from the following:

- a. a confidential communication to immediate family members;
- b. a registered health professional (such as a General Practitioner or psychologist);
- c. a spiritual leader or Elder;
- d. a registered legal practitioner;

- e. [NSW Police](#); and
- f. staff from relevant government agencies, including the [Anti-Discrimination Board of NSW](#), [Australian Human Rights Commission](#), [Tertiary Education Quality and Standards Agency](#) or [NSW Ombudsman's Office](#).

(54) Disclosure of information about a report, University response or investigation may be a breach of the [Student Discipline Rules](#) and [Student Discipline Procedure](#).

### **Protection from Reprisals, Retaliations, or Threats**

(55) Students must not victimise another person, or commit or threaten to commit an act of reprisal, because that person has:

- a. asked for support regarding Sexual Assault or Sexual Harassment;
- b. reported Sexual Assault or Sexual Harassment;
- c. provided information about a report of Sexual Assault or Sexual Harassment;
- d. referred someone else to support for Sexual Assault or Sexual Harassment;
- e. helped someone else report Sexual Assault or Sexual Harassment; or
- f. been the subject of a report of Sexual Assault or Sexual Harassment.

### **Investigation by the University**

(56) An investigation by the University will assess whether, on the Balance of Probabilities, the reported Sexual Harassment or Sexual Assault is a breach of the [Student Discipline Rules](#). The University's investigation process is not a substitute for criminal processes.

(57) Where a University investigation concludes that the behaviour(s) reported is a breach, a finding of misconduct may be made under the [Student Discipline Rules](#). The [Student Discipline Procedure](#) lists a range of sanctions which may be imposed on a student, or student organisation, as the result of finding of misconduct.

(58) See [Student Discipline Procedure](#) for more information.

### **Procedural Fairness**

(59) Macquarie University will make decisions in accordance with the requirements of procedural fairness. Procedural fairness means:

- a. decisions relating to allegations must be made based on evidence provided;
- b. an alleged perpetrator is entitled to be given notice of the allegations against them and of any associated process. They will be given the opportunity to respond to allegations;
- c. all parties may be accompanied to any meeting by a support person, if they wish;
- d. the parties involved will not be required to meet with one another to reach a resolution; and
- e. a person must not hear or determine a misconduct allegation if they are personally and substantially involved in any aspect of the allegation, if they have a current or prior relationship with the person being investigated for misconduct, or with the person who has made an allegation of misconduct.

### **Appeals or Dissatisfaction with University Response**

(60) Where a student or student organisation has had a sanction imposed as a result of a finding of misconduct related to Sexual Harassment or Sexual Assault, the student or student organisation can appeal the finding or the penalty according to the [Student Discipline Procedure](#).

(61) Where a student has made a report to the University about Sexual Harassment or Sexual Assault, and is not

satisfied with the University response, the student can make a complaint within the University or to an external organisation, as described in the [Complaints Resolution Policy for Students and Members of the Public](#).

## **Mandatory Education**

(62) The University may make online or face-to-face education mandatory for Macquarie University students, or for Macquarie University students engaged in specific activities (such as leading student groups).

(63) A student may ask to opt-out of part or all of education, in limited circumstances. These circumstances include:

- a. a student can provide evidence of completion of the education course or its equivalent within the last 36 months; or
- b. past experiences mean participating may have a significant, negative affect on a student's wellbeing.

(64) The University may impose a sanction on students who do not complete mandatory education, and do not request to opt-out of education.

## **Section 3 - Procedures**

(65) Refer to the [Student Sexual Assault and Sexual Harassment Procedure](#).

## **Section 4 - Guidelines**

(66) Refer to the [Guide to Student Sexual Assault and Sexual Harassment Policy and Procedure](#).

## **Section 5 - Definitions**

(67) Commonly defined terms can be found in the University [Glossary](#). For the purposes of this Policy and the [Student Sexual Assault and Sexual Harassment Procedure](#), the following definitions apply:

- a. Balance of Probabilities is a standard of proof which means that it was more likely than not that something occurred in a certain way.
- b. Consent – a person is not able to consent to sexual contact when:
  - i. they are asleep or unconscious;
  - ii. they are substantially intoxicated by alcohol or any drug;
  - iii. they do not have capacity to consent because of their age, physical disability or cognitive capacity;
  - iv. they are intimidated, coerced or threatened;
  - v. they are unlawfully detained;
  - vi. they are pressured to engage in sexual activities by another person, who is in a position of power, authority or trust;
  - vii. they are tricked about the identity of any person involved;
  - viii. they are tricked about the situation; or
  - ix. they are under 16 years of age.
- c. Macquarie University Community includes the following:
  - i. members of the University Council;
  - ii. Staff (see Definition below);
  - iii. Students (see Definition below);

- iv. student organisations including student groups, clubs, and societies;
  - v. sub-contractors working on University Premises;
  - vi. tenants and licensees of University Premises and their officers and staff;
  - vii. persons conducting an authorised business or other activity upon University Premises;
  - viii. members of the public who are visiting University Premises, or taking part in University Activities;
  - ix. people external to the University with whom students or staff interact as part of their study or work (e.g. employers supervising student placements); and
  - x. residents in University Accommodation.
- d. Person-Centred refers to an approach that supports a victim or survivor’s rights and wishes, and prioritises safety, dignity and respect.
- e. Sexual Assault can include a range of sexual acts, which are described below. Threatening to engage in these behaviours may also be considered sexual assault.
- i. rape – the penetration of a person’s vagina or anus by another person, using any part of their body or an object. It includes unwanted oral sex.
  - ii. sexual touching – unwanted touching or threatening to touch a person in a sexual way without their Consent. It can include:
    - unwanted touching of a person’s breast, bottom, or genitals;
    - touching on top of or under clothing that does not penetrate someone’s body;
    - kissing; and
    - a person making someone touch their penis, vagina, or anus.
  - iii. sexual act – behaviour of a sexual nature with or towards another person, without Consent, or when a person is made to do something of a sexual nature. It can include:
    - masturbating in front of another person;
    - a person showing another person their genitals;
    - a person sending another person an unwanted image of genitals, breasts or bottom; and
    - making a person show another person their breasts, bottom or genitals.
  - iv. voyeurism – observing a person on purpose, for sexual gratification, for instance:
    - watching someone who is naked;
    - watching someone who is wearing underwear only, or trying to see someone’s genitals or underwear during day-to-day activities;
    - watching someone using the toilet, showering or bathing; or
    - watching someone engaged in a sexual act.
  - v. recording and / or distributing an intimate image – using electronic, digital or other means to make or distribute photographs, audio or visual recordings of another person, including altered images of another person. Recordings may include, or attempts to include, any of the following:
    - the other person’s breasts, bottom or genitals;
    - the other person wearing underwear (sometimes called “upskirting”);
    - the other person naked;
    - the other person using the toilet, showering or bathing; and
    - the other person engaged in a sexual act.
- f. Sexual Harassment – examples of sexual harassment include, but are not limited to:
- i. unwelcome touching, hugging or kissing;
  - ii. staring or leering;
  - iii. unwanted invitations to go out on dates;



- iv. unwanted requests for sexual contact;
  - v. intrusive questions about a person's private life or body;
  - vi. sexually explicit emails or SMS messages; and
  - vii. touching or fiddling with a person's clothing, such as lifting up a skirt or pulling down trousers.
- g. Staff means any staff member of the University, including officers, employees and contractors of the University and appointees to conjoint, adjunct, emeritus, honorary, clinical and visiting academic positions of the University.
- h. Student means a student of the University and includes:
- i. a person who is enrolled in or auditing a Program or Unit of study provided by the University;
  - ii. a person who is enrolled in a Program or Unit of study at or offered by an affiliated educational institution which is approved as an Award Program or a Unit of study by the University;
  - iii. a person who has accepted an offer of admission to the University but who has not yet enrolled in any Program or Unit of study;
  - iv. a student of another educational institution who is authorised by the University to be on or to have access to or use of University property;
  - v. a person who was a student at the time of any alleged misconduct;
  - vi. a person who became admitted or enrolled as a student after having done so by misleading or dishonest means;
  - vii. any person who has been suspended or excluded from a Program or Unit of study at the University;
  - viii. a person who is on leave of absence from, or who has deferred enrolment in, a Program or Unit of study offered by the University or by an affiliated educational institution which is approved as an Award Program or Unit of study by the University; or
  - ix. any person who undertakes any academic exercise on University Premises or which is part of a Program or Unit of study provided, supervised or assessed by the University.
- i. University means Macquarie University, including:
- i. its controlled entities; and
  - ii. any educational institution located on the premises of the University.
- j. University Accommodation means any:
- i. residential college of the University; and
  - ii. residential premises primarily intended for use as student residences, whether or not they are owned, operated or managed by the University.
- k. University Premises means any:
- i. premises owned operated, supervised, occupied or controlled by the University, including premises of which the University is the landlord;
  - ii. premises on which University Activities take place; and
  - iii. University Accommodation.
- l. University Activities means the activities of the University and the University Community, including:
- i. teaching, study and research at the University;
  - ii. the management or administration of the University;
  - iii. recreational, commercial, disciplinary or ceremonial activities of the University or the University Community;
  - iv. any clinical, professional or practical work, including workshops, camps or field trips or vocational placements, whether or not it is part of a Program or Unit of study at the University;
  - v. any other activities arranged, sponsored, controlled or supervised by the University;
  - vi. activities on any Macquarie University campus and all Macquarie University controlled buildings,

- facilities, places, and equipment; and
- vii. activities using information or communication technologies associated with Macquarie University, such as online learning platforms and social media.
- m. Vexatious / Malicious reports – a report will be considered vexatious or malicious if:
  - i. it does not have a basis in fact; and
  - ii. it is made to damage another person’s or the University’s reputation or standing.

## Status and Details

<b>Status</b>	Historic
<b>Effective Date</b>	17th September 2021
<b>Review Date</b>	1st October 2021
<b>Approval Authority</b>	Deputy Vice-Chancellor (Academic)
<b>Approval Date</b>	15th September 2021
<b>Expiry Date</b>	29th August 2022
<b>Responsible Executive</b>	Rorden Wilkinson Deputy Vice-Chancellor (Academic)
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